

**Rochester Conservation Commission  
April 4, 2017**

**Present:** Michael Conway, Chairman  
John Teal, Vice Chairman  
Kevin Cassidy  
Daniel Gagne  
Laurene Gerrior

**Absent:** Rosemary Smith  
Christine Post  
Maggie Payne, Associate Member

Margaret Gonneville, Board Administrator  
Laurell J. Farinon, Conservation Agent

**The meeting was held at the Rochester Council on Aging Meeting Room, 67 Dexter Lane. Chairman Conway called the meeting to order at 7:05 p.m. and announced that the meeting was being televised.**

Chairman Conway prefaced the meeting by explaining that at the Public Hearing on March 21, 2017 on the Request for an Amended Order of Conditions (DEP File # SE272-0515) by Decas Cranberry Co., Inc., a motion was made and not seconded. He said that in order for a motion to be carried, a proposed motion is needs to be seconded. The two motions made failed since they were not seconded by any of the Conservation Commission members.

Member Gerrior addressed the audience and explained that the Conservation Commission is doing its best to fairly deal with this controversial high profile case.

**Public Meeting**

**A Request for Determination of Applicability filed by David Baillargeon for property located at 698 Walnut Plain Road, Rochester, MA 02770, designated as Lot 7A on Assessor's Map 21. The applicant proposes to construct a 20' x 30' masonry patio and to provide 4 inches of loam plus grade and seed for a formal lawn within the 100-foot Buffer Zone of a Bordering Vegetated Wetland. All work will be conducted on land that has been previously cleared prior to land purchase by previous owner. Erosion control measures will be implemented.**

**Documents submitted:** Portion of Site Plan for 698 Walnut Plain Road and photographs of the proposed construction area

David Baillargeon was present at the public meeting and explained that he plans to construct a 20' x 30' masonry patio behind his house.

Member Gagne asked if the area was relatively flat topographically, and Mr. Baillargeon replied that it is. Member Cassidy asked if there was going to be any additional clearing proposed, and Mr. Baillargeon replied that there will not be additional clearing required.

Agent Farinon summarized that there was a prior filing on this property to demolish and old building and remove trailers and debris. Agent Farinon distributed photographs of the property to the Commission members, and explained that the proposed patio will be within the cleared back yard area. Agent Farinon recommended issuance of a Negative Determination of Applicability with the stipulation that staked hay bale barriers shall be installed at the location shown on the submitted site sketch.

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A motion to accept Agent Farinon's recommendation was made by Member Cassidy and seconded by Vice Chairman Teal. **The motion passed by a vote of 5 in favor, 0 opposed, 0 abstained. (5-0-0)**

**A Request for Extension Permit that was filed by Peter Flood of Green Seal Environmental, Inc. on behalf of Shawmut Associates, LLC, 1245 Shawmut Avenue, New Bedford, MA 02745 for property located 50 Cranberry Highway, Assessor's Map 17, Lot 41F, requesting a three (3) year extension to the previously issued Amended Order of Conditions under DEP SE #272-0501 which will expire on April 4, 2017. The project is only partial completed.**

**Documents submitted:** *Shawmut Associates, LLC Project Completion Schedule* dated March 29, 2017, *Status Report* by Green Seal Environmental dated March 25, 2017 and *Status Chart* by Green Seal Environmental dated March 29, 2017, *Resurfacing Plan prepared for Shawmut Associates, LLC* dated December 29, 2013 and last revised on March 12, 2014, *Stormwater Plan prepared for Shawmut Associates, LLC* dated January 13, 2013 and last revised on June 05, 2013, Photographs of the Zero Waste Facility on 50 Cranberry Highway

Bob Bersin of Green Seal Environmental, Inc. and Michael Camara of Shawmut Associates, LLC were present at the public meeting. Mr. Bersin stated that he met with Ken Motta, Peer Review Engineer for the Planning Board, in September of 2016 to review the partially installed stormwater collection system. He said that they prepared a proposal to make repairs to the system in January of 2017 for review by the Planning Board. Mr. Bersin stated that he visited the site with Agent Farinon and Mr. Camara and that additional hay bale barriers were installed and siltation fencing repaired. Shawmut Associates, LLC is requesting a three year extension permit to complete the project.

Member Gerrior asked Mr. Camara when the fire at the facility occurred and Mr. Camara replied on May, 15, 2016.

Member Cassidy asked if the sediment problem had been addressed with hay bales and Mr. Bersin replied yes. Mr. Bersin said that the gravel parking area needs to be loamed, seeded, and stabilized in order to mitigate the sediment problem.

Mr. Camara explained the history of the project and the financial issues that the facility has had. Mr. Bersin stated that they were looking for the standard 3 year extension permit. Member Gagne recommended that the Commission limit it to a two year extension.

Agent Farinon summarized that this was a request for an extension to the previously issued Amended Order of Conditions under DEP SE #272-0501 which will expire on April 4, 2017. She explained that the project completion has been delayed due to the bankruptcy, but that the majority of the Cultec storm water leaching areas has been installed except for one area. Ken Motta of Field Engineering has been doing regular inspections on behalf of the Planning Board. She said that Mr. Motta was out there today because of the rain storm and that Mr. Motta has drafted a memo detailing minor adjustments that need to be made. Agent Farinon recommend the issuance of an extension permit for two years in order to complete the project.

A motion to accept Agent Farinon's recommendation was made by Member Gerrior and seconded by Member Gagne. **The motion passed by a vote of 5 in favor, 0 opposed, 0 abstained. (5-0-0)**

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**Public Hearing**

**DEP SE 272-0534**

**An Abbreviated Notice of Resource Area Delineation filed by Steve Long of Borrego Solar Systems, Inc., 55 Technology Drive, Lowell, MA 01851, for property located on 453 Rounseville Road, Rochester, MA 02770, designated as Lots 7 & 1H on Assessor's Maps 31 & 34. The purpose of the filing is to confirm 2,295 linear feet of bordering vegetated wetland boundary.**

**Documents submitted:** 11 x 17 ANRAD plan dated March 10, 2017

Steve Long of Borrego Solar Systems, Inc. was present at the public meeting, and explained that they submitted an ANRAD filing for the confirmation of the wetland line on the subject property containing two parcels; one parcel includes 14 acres and the other parcel has approximately 67 acres and is fully wooded. He said that the wetland was delineated by Meredith Borenstein, Professional Wetland Scientist, of New England Environmental in Amherst. He said that there is a perennial stream from the southwest to the northeast of the property and that they redlined the 100 foot Buffer to the perennial stream on the 11 x 17 plan submitted.

Member Gerrior asked if the northeast part of the stream was emptying into the wetlands and Mr. Long replied that it does not.

Agent Farinon explained that the applicant submitted an ANRAD filing in order to get the wetland line confirmed, and recommended that the Commission continue the public hearing so that the area adjacent to Rounseville Road can be delineated in the field and she can meet with the wetland scientist to discuss the flag line. Mr. Long agreed with the recommendation.

A motion to accept Agent Farinon's recommendation was made by Member Gagne and seconded by Vice Chairman Teal. **The motion passed by a vote of 5 in favor, 0 opposed, 0 abstained. (5-0-0)**

A site visit was scheduled with Mr. Long for April 18, 2017 sometime after 6:00 p.m. and before the next public hearing on the same day at 7:00 p.m.

**DEP SE 272-0535**

**A Notice of Intent filed by Paul J. & Cathy A. Estrella of 79 Bradford Lane, Rochester, MA 02770 for property located at 79 Bradford Lane, Rochester, MA 02770, designated as Lot 3P on Assessor's Map 39. The applicant requests approval to construct a 32' x 40' accessory building located within the Buffer Zone of a Bordering Vegetated Wetland. Erosion control measures will be implemented.**

**Documents Submitted:** Revised plan entitled "*Site Plan of New Accessory Building prepared for Paul J. & Cathy A. Estrella, 79 Bradford Lane, Rochester, Mass.*" dated March 11, 2017 and revised on April 4, 2017.

Richard Charon of Charon Associates, Inc. and applicants Paul J. & Cathy A. Estrella were present at the public hearing.

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Mr. Charon explained that the applicants propose to construct a 32' x 40' accessory building located within the Buffer Zone of a Bordering Vegetated Wetland. The will be a 2 to 3 foot high retaining wall on the right hand side of the building. He said that he revised the plans to include a 1:1 slope to minimize earthwork near wetlands. There will be additional stone at the bottom of the driveway to mitigate storm water runoff and rip-rap proposed on the back side of the building for stabilization. He said that they filed with the Natural Heritage & Endangered Species Program and received a response indicating that there will be no adverse impacts as a result of the proposed project.

Member Cassidy asked if there will be a lawn area around the structure, and Mr. Charon replied that there will not.

Member Gagne asked if moving the building forward had been considered and Mr. Charon replied that it wouldn't meet zoning requirements and there would be more complications with the driveway if they did.

Agent Farinon stated that the site plan had been revised since she had done the site walk. She said that there was a design constraint to bring the building forward. She said that the stone pad will handle the 240 feet of new pavement. Agent Farinon recommended the issuance of a positive Order of Conditions with the stipulation that hay bale barriers and siltation fencing be installed as shown on the plan, and the brush pile adjacent to the wetland be removed.

A motion to accept Agent Farinon's recommendation was made by Member Cassidy and seconded by Vice Chairman Teal. **The motion passed by a vote of 5 in favor, 0 opposed, 0 abstained. (5-0-0)**

***(Continued from March 21, 2017)* A Request for an Amended Order of Conditions (DEP File # SE272-0515) was made by Decas Cranberry Co., Inc. for property located at 109 Neck Road and designated as Assessor's Map 40, Lot 3. The original Order of Conditions allowed for the construction of a tailwater pond to serve approximately 80-acres of existing cranberry bogs. The Rochester Conservation Commission issued a Notice of Violation on January 27, 2017 ordering Decas Cranberry to cease and desist construction activity because the 9-acre pond has been over excavated by eight feet. Decas Cranberry requests an Amended Order of Conditions to complete the following work: spread remaining soil piles back in the excavation, final grade the bottom and side slopes, perform an as built survey of the excavated area, turn the dewatering pumps off, prepare an as-built plan of the excavated area, and determine the volume of material that has been removed. The property owner of record is Decas Cranberry Co., Inc., 4 Old Forge Drive, Carver, MA 02330. The applicant's representative is Brian R. Grady, G.A.F. Engineering, Inc., 266 Main Street, Wareham, MA 02571.**

**Documents submitted:** Plan entitled "*As-Built Tailwater Pond & Earth Removal Plan, 109 Neck Road, Rochester, MA, Prepared for Decas Cranberry Company, Inc.*" by G.A.F. Engineering, Inc. dated March 2, 2017, and last revised March 31, 2017 and a letter from Attorney Adam Brodsky dated April 4, 2017

Brian Grady of G.A.F. Engineering, Nick Decas of Decas Cranberry Company, Scott Hannula of Oiva Hannula & Sons, Inc. and Attorney Adam Brodsky were present. Peter Newton of Bristol Engineering Advisors, Inc. and Rochester Town Counsel Blair Bailey were also in attendance.

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Attorney Adam Brodsky stated that at the last public hearing the Commission requested a detailed grading plan and more information; Brian Grady of G.A.F. Engineering delivered a revised plan and letter from Attorney Brodsky on March 31st.

Mr. Grady explained that the revised plan shows that the stockpiles of material will be pushed back into the excavation; the eastern end of the pit will be shaped and stabilized, and the western end will remain in its present condition. He said that Stockpile #2 will be used to stabilize the slopes. He said that efforts will concentrate on the eastern part of the excavation. The contractor has concerns with the western part because of safety issues.

Mr. Grady stated that they are requesting an Amended Order of Conditions. He said that an as-built plan was prepared and that the total volume of what was removed was presented in the previously submitted letters from Ryco and Oiva Hannula & Sons; 50,000 yards of gravel left the site and 35,000 yards remained stockpiled on site. They propose to push the stockpiled material back into the excavation, turn the pumps off, and the project will be done. He said that the bottom elevation will be brought up to 35 and that parts of the tailwater pond are already at elevation 35.

Mr. Grady explained that they are staying out of the lowest area closest to Long Pond. Chairman Conway commented that the contractors did not have concerns when they took material out of the hole. Mr. Grady stated that working out of the hole is easier than working in. Attorney Brodsky said that the contractor said that it was unsafe to work in that section.

Attorney Brodsky stated that he submitted the following draft proposed special conditions for review and consideration by Commission members:

1. All work shall be conducted per the most recent revised plan of March 31, 2017
2. Decas will be work as soon as the Amended Order of Conditions is issued and the appeal period ends. Decas will as soon as possible shut off the pumps and stabilize the sides. Decas intends to work immediately with G.A.F. supervising the work and provide as-built data.
3. Regrading work will take about 4-5 days and observed by a full-time construction monitor selected by the Commission and paid by Decas.
4. A wide track bulldozer fueled by biodiesel will be used to perform the regrading work. Decas shall be permitted to use conventional fueled equipment outside of the pond excavation above the grade of the dike.
5. Two groundwater monitoring wells will be installed at locations selected by the Commission's hydrogeological consultant.
6. After installation of the monitoring wells and prior to the shut off of the pumps, Decas shall perform a horizontal and vertical survey of the monitoring wells and submit a survey plan.

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7. After receipt of the survey plan and prior to the shut off of the pumps, the consultant shall measure the groundwater elevations in the monitoring wells and provide data.
8. After the shut off of the pumps, the consultant shall continue to measure groundwater elevations in the monitoring wells until the groundwater levels reach equilibrium and provide a report. The report will include the assessment of the impact of dewatering activities on Snow's Pond.
9. Decas shall deposit a mutually agreeable sum for the outside consultant. Any funds in excess shall be refunded to Decas.

Attorney Brodsky stated that Decas will work closely with Peter Newton and Agent Farinon.

Member Gagne commented that he recommends that a Professional Engineer from G.A.F. Engineering do the monitoring. He also said that Condition 3 should say bio-fluids instead of biodiesel including hydraulic fluids.

Chairman Conway commented that the work should be done with the Soil Board requirement of a 3 to 1 slope and Attorney Brodsky said that it would. Chairman Conway asked if bio-fluids were currently used in the dewatering pumps and Mr. Hannula replied that conventional fluids were being used.

Mr. Newton stated that he was fine with Decas hiring their own drilling firm as long as they used his specifications.

Gary Florindo of 33 County Road and Chairman of the Soil Board, advised the Conservation Commission to move forward because of the quorum issues with the Soil Board. He asked that an as-built plan be sent to the Soil Board. He recommended using a fully automatic hydrostatic bulldozer. He said that biodiesel is only a 5 percent additive to diesel fluid.

Member Cassidy asked if spill kits were being used and Mr. Hannula replied yes. Mr. Hannula stated that they were getting Milton CAT certified bio-fluids.

Shawn Dufficy of 293 Hartley Road asked how long before the pumps would be shut off; Attorney Brodsky replied after the ten business day appeal period.

Mr. Newton explained that baseline monitoring will be done a week after the wells are drilled.

Alex Beard of 122 Pine Street inquired about how long the monitoring will be done; Town Counsel Bailey replied that the monitoring will be done for about a year.

Agent Farinon summarized that she met with Mr. Grady on Friday, March 31, 2017 and received the revised plan and letter from Attorney Brodsky. She said that she has been consulting with Town Counsel and Peter Newton about the additional peer review consulting fee, logistics of monitoring well installation and groundwater elevation monitoring. Attorney Bailey recommended that the installation of the monitoring wells should not be included in Mr. Newton's contract. Discussion ensued about Condition #2, the Commission agreed that Brian Grady or Bill Madden of G.A.F. are acceptable for daily construction oversight. Agent Farinon recommended that a condition be added requiring a pre-construction meeting with the engineers be added, that secondary containment be placed around the diesel pumps, and that spill kits be available on site.

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Agent Farinon recommended that the Commission issue an Amended Order of Conditions accept the submitted revised plan, and that the project be completed in accordance with the following Special Conditions went over the Special Conditions for the Amended Order of Conditions:

1. All work shall be conducted in accordance with the Plans entitled “As-Built Tailwater Pond & Earth Removal Plan, 109 Neck Road, Rochester, MA, Prepared for Decas Cranberry Company, Inc.” by G.A.F. Engineering, Inc. dated March 2, 2017, and last revised March 31, 2017.
2. Decas will begin regrading work as soon as the Amended Order of Conditions is issued and appeal periods have lapsed. Work will continue uninterrupted until complete. A professional engineer or Brian R. Grady, R.S. from G.A.F. Engineering will make daily observations and report with photographs of work progress and submit such observations to the Rochester Conservation Commission. Decas shall continue to submit monthly turbidity testing as outlined in the OOC and submit reports to the Commission. Decas shall use best efforts to perform the work and shut off the pumps as soon as practical in conjunction with the other conditions herein. At the conclusion of regrading work, G.A.F. Engineering shall prepare an as-built plan and certify to the Commission that the work was performed in substantial compliance with the Amended Order of Conditions.
3. Decas shall use one wide track bulldozer using bio fluids in the pond excavation to perform the regrading work. Decas shall be permitted to use conventional fueled equipment outside the pond excavation above the grade of the dike.
4. Decas shall install two groundwater monitoring wells at locations to be selected by the Commission and/or its consultant as soon as practicable and at Decas’ sole cost. The monitoring wells shall be utilized to evaluate the project’s impact on hydrogeologically connected water resources only. The monitoring well installations shall be observed and directed by the Commission’s consultant, who shall prepare geologic boring logs to be submitted to the Commission and Decas.
5. As soon as practical after installation of monitoring wells and prior to the shut off to the pumps, Decas shall perform a horizontal and vertical survey of the monitoring wells and submit a survey plan to the Commission and its consultant.
6. Following receipt of the survey plan and prior to the shut off of the pumps, the Commission’s consultant shall measure the groundwater elevations in the monitoring wells, and, thereafter, provide a report of the data collected to the Commission and Decas.
7. After the shut off of the pumps, the Commission’s consultant shall continue to measure groundwater elevations in the monitoring wells on a mutually agreeable schedule for a period of one (1) year, and provide periodic reports of the data collected to the Commission and Decas. The final report will include the consultant’s assessment of the impact of dewatering activities on Snows Pond.
8. Decas shall deposit \$20,000 into the Commission’s outside consultant account to be used to pay for the reasonable costs of its consultant. Any funds in excess of the consultant’s costs shall be refunded to Decas.

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9. Secondary containment shall be placed around the diesel pumps.
10. Spill kits shall be available on site.

A motion to accept the Special Conditions and issue an Amended Order of Conditions was made by Member Gerrior and seconded by Vice Chairman Teal. **The motion passed by a vote of 5 in favor, 0 opposed, 0 abstained. (5-0-0)**

**Commission Business**

**For Signature**

**Minutes**

A motion to approve the minutes of March 7, 2017 was made by Member Gagne and seconded by Vice Chairman Teal. Member Gerrior and Member Cassidy abstained since they were not present at the meeting. **The motion passed by a vote of 3 in favor, 0 opposed, 2 abstained. (3-0-2)**

A motion to approve the minutes of March 21, 2017 was made by Member Gagne and seconded by Member Gerrior. Vice Chairman Teal abstained since he was not present at the meeting. **The motion passed by a vote of 4 in favor, 0 opposed, 1 abstained. (4-0-1)**

**Voucher(s)**

*The following vouchers were approved for payment:* Rochester Land Trust, Inc. for Land Acquisition Costs related to the Davis/Mullens property off Mattapoisett Road, Map 2, Lot 21: \$25,000 and MSMCP Annual Meeting: \$20.00.

**Mullin Rule Affidavit**

Vice Chairman Teal signed a Mullin Rule Affidavit for a hearing missed on March 21, 2017 for an Amended Order of Conditions DEP SE 272-0515.

**New Business**

**15 Year Status Report (2001-2016) Mattapoisett River Valley Land Protection Partnership**

Agent Farinon distributed the 15 Year Status Report (2001-2016) Mattapoisett River Valley Land Protection Partnership by Buzzards Bay Coalition.

**Future Meetings and Site Visits**

Commission members discussed their availability for upcoming meetings and site visits. All members present will be available for the next meeting on Tuesday, April 18, 2017. The next meeting on Tuesday, April 18, 2017 will be held in the Rochester Council on Aging Meeting Room at 67 Dexter Lane. All members present will be available for site visits scheduled for Tuesday, April 18, 2017 at 6:00 p.m.



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**Adjournment**

The meeting adjourned at 8:55 p.m. on a motion made by Member Gagne and seconded by Vice Chairman Teal. **The motion passed by a vote of 5 in favor, 0 opposed, 0 abstained. (5-0-0)**

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Margaret Gonneville, Board Administrator

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Michael Conway, Chairman